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Federal Subsidy for Laid-Off Workers' Health Insurance A First Year's Report Card for the New COBRA Premium Assistance

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Research Report, July 2010

This brief assesses a temporary but important new federal subsidy for laid-off workers and dependents. Most working-age Americans and their families obtain health care coverage at the workplace and often lose it when they leave or lose their job.¹ The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) addressed this gap by requiring sizeable group health plans to continue job-based coverage for people losing eligibility.² COBRA enrollees have to pay the average cost of the employer plan, however, which deters enrollment.³ In February 2009, Congress reduced this barrier to COBRA take-up by enacting a new, temporary federal subsidy of 65 percent of premium for job losers under the American Recovery and Reinvestment Act (ARRA).⁴

The new subsidies were expected to have a large impact. In 2006, nearly 6 million people had COBRA coverage,⁵ and some 7 million were expected to benefit from ARRA starting in 2009.⁶ Since then, job

separations and the unemployment rate have risen,⁷ so COBRA and the ARRA subsidy have become more important. The subsidies have already been extended, and Congress is now considering further extensions. Of course, the subsidies raise the broader question of COBRA's continued role up to and after the implementation of insurance reform

under the Patient Protection and Affordable Care Act (PPACA).

Based upon a literature scan, key informant interviews, and available data, this brief addresses key questions⁸: To what extent did subsidy increase take-up of COBRA coverage? Did subsidy reduce "adverse

selection" of older, sicker people into COBRA coverage? Are yet higher subsidies or other measures needed to move closer to full enrollment? What are the implications for COBRA policy under health reform and for the implementation of health reform itself?

Time-limited federal subsidies for laid-off workers have substantially increased their purchase of continued workplace health coverage. Enrollment still lags program expectations, however. More is needed to approach universal coverage, whether for this population or for all Americans.

Pre-ARRA experience: limited take-up and adverse selection

COBRA requires that large and medium-sized employers allow workers and dependents losing eligibility to retain workplace group coverage for up to 18 months if they pay the full cost of coverage, plus a 2 percent fee to cover administrative costs.⁹ Such continuation coverage

had previously been required by some states, but COBRA applied nationally for employers with 20 or more workers.¹⁰ COBRA coverage filled a gap in the nation's approach to private insurance, and helped reduce "job lock" among people unable to move to more productive work for fear of losing

insurance protection.¹¹ Over 120 million workers and dependents have COBRA-protected workplace coverage.¹²

Employers often object that COBRA costs them too much.¹³ COBRA attracts older and sicker people, they note, with health care expenses above the average for active employee coverage, while younger and healthier job leavers can find cheaper if less comprehensive insurance in the nongroup market.¹⁴ Administration costs more than 2 percent because of the added complexities of dealing one on one with nonemployees. Consumer advocates, in contrast, often complain that COBRA costs enrollees too much. Enrollees must pay the

The ARRA subsidy: targeted at job losers only

ARRA's new subsidies were prompted by a historically severe recession, very high layoffs, long lags in finding new jobs, and a desire to stimulate economic activity. The goals were to make COBRA coverage more affordable for all laid-off workers and, secondarily, more attractive to the young and healthy. Employers use the same premium-contribution strategy to attract participation among active workers. Given the recession, ARRA's concern was job loss, not job lock, and the subsidy was targeted only to job losers—workers losing jobs involuntarily and their dependents—not to other types of job leavers. To provide emergency relief, Congress called for extremely rapid implementation and also made eligibility partially retroactive.

ARRA passed on February 17, 2009, and provided that eligible people's payments should drop to 35 percent of premiums starting with the very next period of coverage, typically March 1st.¹⁸ Federal agencies were to create eligibility rules and model notices for ex-workers within 30 days of the legislation. Employers or their designees then had another 30 days to notify all of their qualified ex-workers, including those laid off as far back as September 1, 2008. Workers previously laid off

employer's average cost for health benefits, plus a 2 percent allowance for administrative costs, whether they elect individual or family coverage. Ex-workers face "sticker shock" because they have lower incomes but far higher premiums—102 percent for COBRA, versus only about 17 percent for active employees with self-only coverage.¹⁵ In practice, 20 percent or fewer of eligible people typically enrolled in COBRA, although the average varied by year and by firm,¹⁶ and participants generated about \$1.50 in medical spending for each dollar they contributed in premium.¹⁷

were given a second chance to enroll in COBRA after the passage of ARRA: job losers were eligible for the new subsidy based on involuntary layoffs starting September 1, 2008, but their coverage would begin only after enrollment in 2009.

Employers or their insurers could begin claiming federal funding for the 65 percent of premiums not collected from eligible enrollees starting with the first quarter of 2009. The funding mechanism was an offset to employers' or insurers' regular submissions of withheld payroll taxes to the IRS, due April 30th for the first quarter.¹⁹ ARRA eligibility was initially limited to people becoming eligible for COBRA through 2009.²⁰ ARRA initially provided that an enrollee's subsidy could not exceed 9 months, only half the 18-month COBRA entitlement. Eligibility for subsidy is also cut off if an enrollee becomes eligible for Medicare or new workplace coverage, including spousal coverage. In December 2009, the duration of subsidy was increased to 15 months, and the eligibility period was extended into early 2010.²¹ In April 2010, the eligibility period was again extended, in light of continued high unemployment.²²

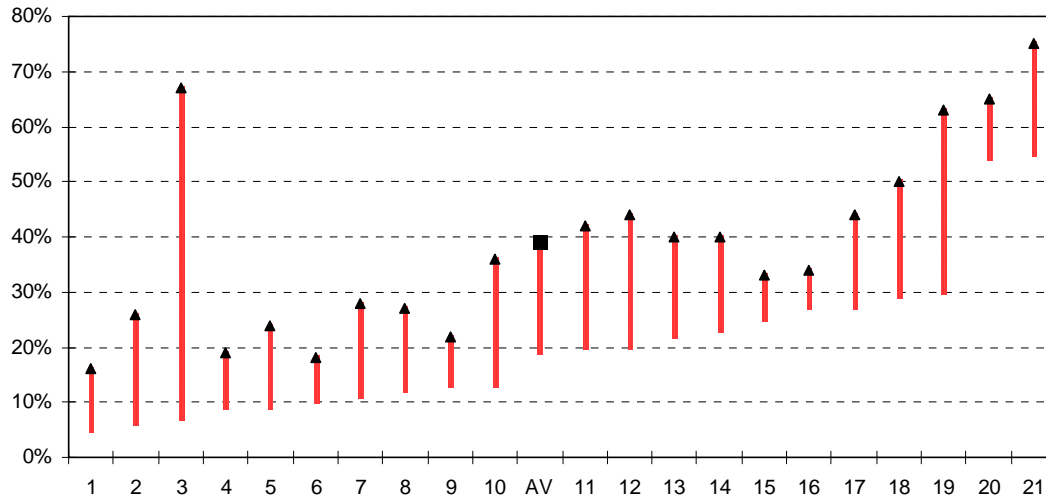
Post-ARRA increases in take-up: varying experience

The ARRA subsidies have increased participation in COBRA, but to different extents in different

populations. The first impact was a doubling of take-up, as reported by Hewitt Associates in

Figure 1. Change in Observed COBRA Take-Up Rates before and after ARRA, 21 Industry Sectors

(bottom of bars = rate during 3/08–2/09, top = 3/09–11/09)



Source: Hewitt Associates (Dec. 23, 2009)

Note: Pre-ARRA data include all COBRA elections; post-ARRA data include only subsidized elections. Data reflect experience of 200 large U.S. companies with about 8 million employees. The graphed sectors are 1: other, 2: construction, 3: industrial manufacturing, 4: chemicals, 5: retail, 6: health care, 7: leisure, 8: food & beverage, 9: energy & utilities, 10: media, 11: business services, 12: pharmaceuticals, 13: computer hardware & services, 14: insurance, 15: automotive & transport, 16: financial services, 17: telecommunications, 18: banking, 19: aerospace & defense, 20: consumer products, and 21: electronics. AV = average.

August 2009 and updated in December (figure 1).²³ Hewitt estimated that the pre-ARRA average COBRA take-up rate was 19 percent (figure 1, center), a value in the upper middle of the range of values reported during earlier pre-ARRA years.²⁴ Hewitt's average take-up among involuntarily laid-off people doubled to 39 percent after ARRA. The Hewitt data come from large firms, averaging 40,000 workers each.

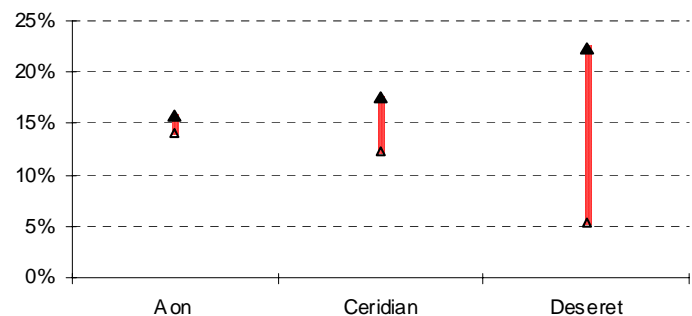
The average, however, reflected a wide range of underlying take-up rates across the 21 economic sectors included. The biggest jump by percentage points occurred in industrial manufacturing, which rose by 60 percentage points—from 7 to 67 percent (figure 1). Second largest was aerospace and defense, up 33 percentage points to 71 percent after ARRA. The smallest increase was reported for financial services, where enrollment rose only 7 percentage points to 34 percent. Increases most commonly rose by 10 to 19 percentage points.²⁵

Data from other sources also show wide variation (figure 2). In data provided to this project, Aon, a national brokerage and benefits consulting firm, reported only 2 percentage points of increase after ARRA, from 14.1 to 15.9

percent (figure 2). Its information came from about 60 firms, averaging about 6,000 employees each.²⁶ Ceridian, another large national benefits management firm, reported a 5 percentage point increase, a rise from 12.4 to 17.7 percent. Ceridian's covered employee population is almost as large as Hewitt's but is spread across far more and far smaller firms, averaging fewer than 150 workers each.²⁷ Finally, Deseret Mutual, a non-profit

Figure 2. Other Observed COBRA Take-Up Rates before and after ARRA

(bottom of bars = pre-ARRA rates, top = post-ARRA rates)



Sources: Aon and Deseret—proprietary data supplied to authors; Ceridian—release of Oct. 16, 2009.

Notes: Aon data included 59 firms with about 370,000 employees in 2008, 61 firms and 395,000 workers in 2009; Ceridian, 50,000 firms and 7.3 million employees; and Deseret, 22 firms and almost 100,000 workers. Aon and Deseret dates are calendar 2008 vs. 2009.

benefits-management organization that insures a grouping of affiliated firms, experienced a rise of 17 percentage points in COBRA take-up, starting from a relatively low baseline rate, from 5.3 to 22.5 percent; its 22 firms average about 4,000 employees each.²⁸

A final estimate is that at least a quarter to a third of ARRA-eligible people take up COBRA coverage.²⁹ This estimate comes from a survey of unemployment recipients by the U.S. Department of the Treasury rather than from employers, but its finding is quite consistent with the post-ARRA levels in figures 1 and 2. Treasury's Office of Economic Policy sampled over 6,000 recipients of unemployment insurance (UI) in New Jersey during the fall and winter of 2009. This is a population-based study with a broader base than

Other observations about take-up estimates

The apples-to-apples problem. Most of the before-and-after take-up rates presented above likely underestimate ARRA's effects on its target population of job losers because they do not compare the same types of people before and after ARRA. The population of interest is involuntary job losers (and their dependents)—the people who were offered subsidy. Until ARRA gave firms a business reason to track such job losers separately, however, companies did not do so.³¹ Before ARRA, everyone was simply seen as eligible for regular COBRA coverage. Even since ARRA, results presented may mix the two categories; the Ceridian and Deseret figures presented above include both types of job separations. This mixing could well bias estimates downward.³²

This project obtained data from Aon and from Deseret that showed post-ARRA take-up separately for job losers and job leavers, unlike the Hewitt or Ceridian. Neither firm had regularly maintained such information before ARRA, but because of how it implemented the "second chance" provision of ARRA, Deseret could provide sufficient information to estimate pre-ARRA experience, at least for late 2008. The post-ARRA combined take-up of voluntary and involuntary separations was 22.5 percent

any of the employer-based reporting, and as job losers, UI recipients are likely eligible for subsidy. Like most other sources of data, the survey necessarily lacks a baseline for comparison and omits some subsidy-eligible people not covered by UI.³⁰

Observed COBRA take-up rates have thus risen across many different employers. The two largest data; the precise size of the change, however, is not definitive in the absence of complete, nationally representative data. Both the reported baseline rates of COBRA participation and the levels after subsidy vary widely. Variations are likely driven by a variety of circumstances.

(presented in figure 2), but the estimated rate for job losers alone was about 35 percent, whereas only about 6 percent of all job leavers enrolled.³³ Deseret's post-ARRA take-up of regular COBRA was thus little changed from the pre-ARRA rate (6.0 percent in 2007, 5.6 percent in 2008), whereas the subsidized take-up was much higher. As a result, fully 88 percent of the firm's 2009 COBRA enrollees qualified for ARRA subsidy, a much higher share than at Aon.³⁴ A note of caution here is that about 70 percent of these Deseret ARRA enrollees had unusual incentives, as discussed further below. For other ARRA eligibles, take-up was estimated at about 15 percent—much lower, although still a sharp increase over the firm's low pre-ARRA rate.³⁵

The lack of differentiated baseline information unfortunately clouds an understanding of ARRA's effects. No data source provides information about both voluntary job leavers and involuntary job losers both before and after ARRA. The extent of change in regular COBRA take-up among job leavers could have served as at least a rough control for how worsening economic conditions may have changed take-up.³⁶ It is plausible that baseline take-up was higher among job leavers than job losers and that observed recent rates among job

leavers have actually declined in a poor economy, while job losers' rates have risen from a lower base, owing to the subsidy. If so, differentiated data would show greater effects of ARRA subsidies than the raw numbers displayed above.

ARRA's retroactive, "second-chance" eligibility. The same Deseret data also suggest that ARRA's unusual second-chance eligibility may well have been less effective than intended. ARRA created what it termed an "extended election" period for people previously laid off between September 1, 2009, and ARRA's effective date of February 17, 2010. If such people had not taken up unsubsidized COBRA the first time it was offered (or if they took it up but later dropped it), they got

Other factors that may enhance take-up of COBRA

We hypothesize that many factors influence the propensity and ability to enroll in continuation coverage—including the size of the enrollee share of premium, relative to expectations and relative to resources; household incomes and assets; severance benefits from employers; job prospects; age and health status; access to spousal or other group coverage, Medicaid, or Medicare; as well as enrollment mechanisms and local availability of reduced-fee services from safety net providers. Some of these factors were at work in two situations of changed take-up observed by this project.

Sticker shock is sometimes blamed for low COBRA take-up—that is, COBRA's change in premium from an employee's accustomed 17 percent of average employer cost to 102 percent. Behavioral economics emphasizes the importance of such changes relative to experience, in addition to current prices.³⁹ Deseret provided a small but intriguing example of a premium change that reversed sticker shock: ARRA made COBRA premiums look like a bargain rather than a burden for a set of laid-off insurance agents, whose prior commission-volume-based employer share of premium had averaged only about half of monthly premiums. After job loss, ARRA's 65 percent subsidy actually reduced their premium costs. This set of job losers had very high take-up, 59.1 percent, consistent with the hypothesis. However,

a second chance to enroll with the new ARRA subsidy starting in March 2010. If they had already enrolled, ARRA gave them the opportunity to switch from paying the full COBRA cost to only 35 percent of that amount.

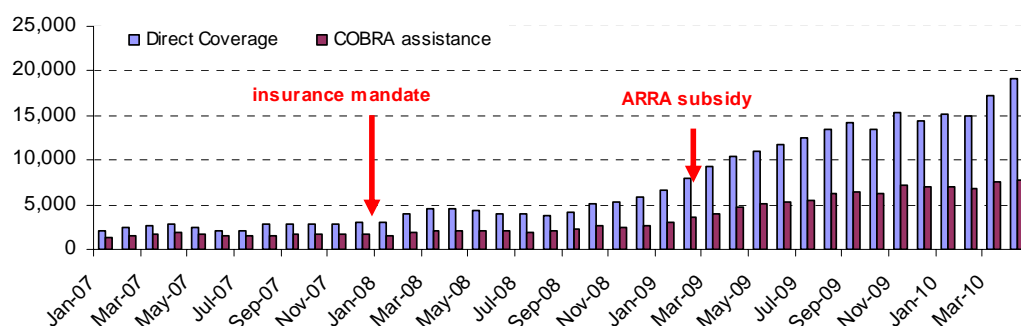
This provision added to the complexity of administering ARRA subsidies and occasioned some complaints from benefits administrators about higher costs.³⁷ But what were the benefits of the provision? Deseret data show that its COBRA take-up rate for involuntary layoffs in late 2008 was under 5 percent, a little below the rate for voluntary terminations and little changed from the overall COBRA rate earlier in 2008 or in 2007.³⁸

these ex-agents had all also received unusual severance payments based on their years of service, which made COBRA more affordable to them than to many other job losers after ARRA.⁴⁰

Affordability may be at a near maximum since ARRA's passage for one set of Massachusetts COBRA eligibles. There, the state's Medical Security Program (MSP) has long reimbursed laid-off workers for 80 percent of their monthly COBRA or other health insurance premium for as long as they receive compensation from unemployment insurance (UI).⁴¹ Starting with ARRA, eligible people receive both state and federal subsidies, making their net cost only 7 percent of premium.⁴² If COBRA or previous insurance is unaffordable, even with assistance, MSP provides free Direct Coverage, a low-copay, HMO-like plan. UI recipients are eligible for MSP if they live as well as work in the state, have annual incomes under 400 percent of the federal poverty level (FPL), and are not eligible for spousal coverage or another public program.

The MSP program cannot track take-up rates, but it does report a very large recent run-up of coverage (figure 3).⁴³ Conventional wisdom attributes the growth in the MSP-covered population to three factors—increases in the unemployment rate, starting in February 2008; repeated congressional extensions to the length of

Figure 3. Enrollment Growth in the Massachusetts Medical Security Program since January 2007



Source: Tabulated from MSP program data.

Notes: The mandate was enacted in April 2006 and technically became effective in July 2007, but enforcement began in January 2007 through a tax-based penalty for noncoverage. Changes to unemployment compensation began in July 2008; see text.

UI benefits, starting in mid-2008; and the phase-in of Massachusetts's unique mandate on individuals to obtain health insurance.⁴⁴ The mandate took effect in July 2007, but tax penalties were only imposed beginning in January 2008 and rose thereafter.⁴⁵ Accordingly, one can examine MSP's growth across three eras, before the mandate, between the mandate and ARRA, and after ARRA's implementation (table 1).

Several observations are notable. First, since 2006, growth in both MSP programs has far outpaced UI growth. This suggests that the insurance changes may have been more influential for enrollment than the growth in the underlying

UI population that includes MSP eligibles.⁴⁶ Also, MSP growth has been much more regular than that of the UI population.⁴⁷ Second, ARRA appears to have accelerated the growth in MSP-COBRA relative to Direct Coverage. Before ARRA, Direct Coverage grew much faster than MSP-COBRA, as one might expect for a free program relative to one with a premium obligation. After ARRA, the doubly subsidized COBRA program grew a bit faster than Direct Coverage (figure 3 and table 1). Third, the post-ARRA period featured much higher rises in COBRA take-up than in UI recipients.

Adverse selection

COBRA has always attracted a population of enrollees that averages higher medical spending than active workers and dependents—which insurers call adverse selection.⁴⁸ Many commentators imply that adverse selection is severe.⁴⁹ Indeed, COBRA's design appears to foster selection effects. Enrollees decide on coverage on an individual basis and must be accepted without regard to age or health risk. People sign up retroactively during a grace period after receiving notice of their COBRA rights, so they can wait for months to see whether a need develops after job separation.⁵⁰ At the same time, younger and healthier COBRA eligibles who

want to remain insured can find cheaper policies in nongroup markets that allow underwriting and routinely age-adjust premiums. Logic suggests

Table 1. Rises in MSP Participation and Unemployment Insurance Population (simple percentages)

Era	Times	Increases by time period (%)		
		MSP COBRA	MSP Direct Coverage	UI recipients
Pre-mandate year	1/07–12/07	20	42	2
Run-up to ARRA	12/07–2/09	115	169	194
Post-ARRA period	2/09–12/09	93	81	5
Cumulative	1/07–12/09	451	590	215

Sources: MSP tabulations made from data supplied by the Mass. Medical Security Program, Division of Employment and Training; UI data downloaded 14 May 2010 from <http://workforcesecurity.doleta.gov/unemploy/content/data.asp>.

Note: Time periods for MSP and UI differ slightly.

Table 2. Average Age and Expenditures for ESI and COBRA Enrollees, 2006

Coverage	Average Age	Annual Expenditure
ESI	37	\$2,028
COBRA	41	\$3,369

Source: Urban Inst. tabulations from MEPS-household component. Notes: expenditures are private-insurer, non-governmental spending; population is those with full year coverage, including dependents; ESI is employer sponsored insurance; COBRA means participation in COBRA during any part of the year.

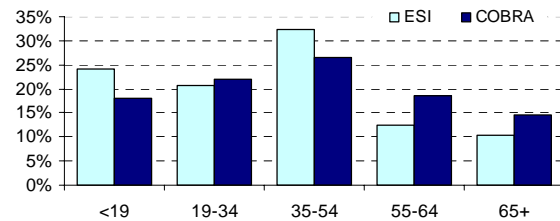
that, by lowering the cost of enrollment, ARRA's subsidies should have made COBRA enrollment relatively more attractive to younger, healthier, lower-spending people, just as employer subsidies are designed to do for active workers. What patterns of selection appears to exist before and after ARRA?

Pre-ARRA patterns. Selection into regular COBRA is best illustrated with findings from MEPS, which has nationally representative data. (MEPS is the federal Medical Expenditure Panel Survey of households.) MEPS data show that people who enroll in COBRA are older and have higher private insurance spending than other people covered by employer-sponsored insurance (ESI) (table 2).⁵¹ The ESI population averages about \$2,000 a year per person in insured spending, compared with somewhat over \$3,000 for COBRA. These levels of spending are consistent with prior reports that insured spending for COBRA enrollees is about half again higher than that for ESI active-worker coverage.⁵²

The COBRA population is also somewhat older, averaging 41 years of age, about 10 percent older than the ESI population. The higher average reflects the higher share of COBRA enrollees in older age cohorts (figure 5). Curiously, the cohort

Figure 4. Age Distributions for ESI and COBRA Enrollees

(percentage of enrollees by age cohort, MEPS 2006)



of young adults age 19 to 34 is no smaller among those who enroll in COBRA, suggesting that stereotypes of “young invincibles” who are convinced that they do not need health insurance deserve further investigation. (These percentages are shares of enrolled population, not take-up rates. They do not adjust for any difference in younger people’s propensity to leave or lose their jobs so as to become eligible for COBRA during the year.)

MEPS also documents the health status of the COBRA-enrolling population compared with the ESI population (figure 5).⁵³ For both groups, a clear majority of people are in very good or excellent health. Nonetheless, people in fair or poor health account for a substantially larger share of the COBRA-enrolling population relative to the ESI population—11.2 versus 7.3 percent.

The same data also document the wide range of insured expenditure within the populations both of full-year insured active workers and of those who become COBRA enrollees (figure 6). Both for the ESI and the COBRA populations, the largest single category of enrollment by expenditure level is at the very low end—the zero to \$1,000 category.⁵⁴ The ESI population has a somewhat higher share of people at this lowest level as well as at the next lowest level, \$1,000–

Figure 5. Health Status, ESI vs. COBRA

(percentage of population with indicated levels of self-reported health, MEPS 2006)

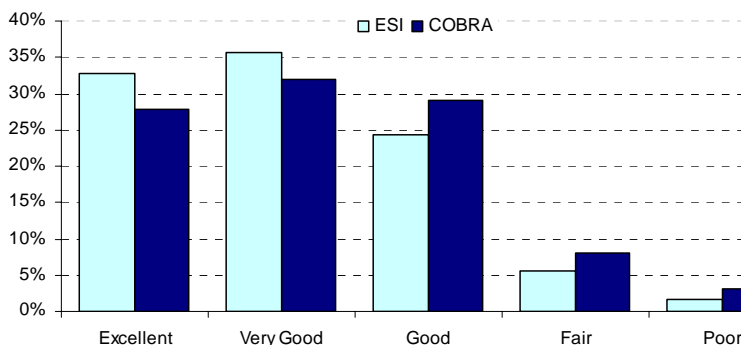
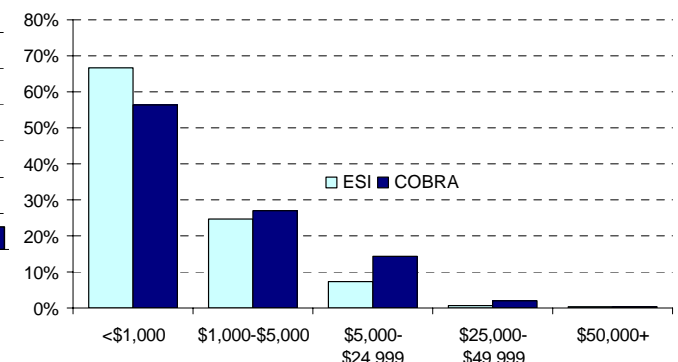


Figure 6. Enrollees by Level of Health Expenditure, ESI vs. COBRA

(percentage of population with indicated levels of insured medical expenditure during the year, MEPS 2006)



\$5,000. It seems highly likely that most people in these categories pay COBRA premiums that exceed their spending.

The next two categories of \$5,000–\$25,000 and \$25,000–\$50,000 each contain twice as high a share of the COBRA population as of the ESI population. There is no difference above \$50,000; only 0.5 percent of each population has spending at this very high level. These higher shares for COBRA at higher spending levels underlie COBRA's 50 percent higher average per-person expenditure (see table 2).

How strong is the adverse selection? News accounts about COBRA tend to focus on chronically ill or injured people who face substantial ongoing health costs. Such people may be easiest for reporters to find, and they have newsworthy stories to tell.⁵⁵ However, enrollees with fair or poor health or with high spending are not typical, seemingly in the 10 to 15 percent range of COBRA enrollees. Just over 10 percent are in fair or poor health (see figure 5). About 15 percent have expenditures in the \$5,000–\$50,000 level, plausibly typical of people with chronic conditions like diabetes, although also of acute-care hospitalizations. The very highest level of spending is likely to reflect unexpected and severe injuries or illnesses, and this category is similar for COBRA and ESI. Most COBRA enrollees seem to value the classical insurance component of COBRA, that is, protection against the risk of ending up in the usual but high-spending category; they do not seem to be just prepaying for expected medical care.⁵⁶ Further investigation is warranted.

Post-ARRA experience. Has the ARRA subsidy reduced adverse selection, as theory suggests that

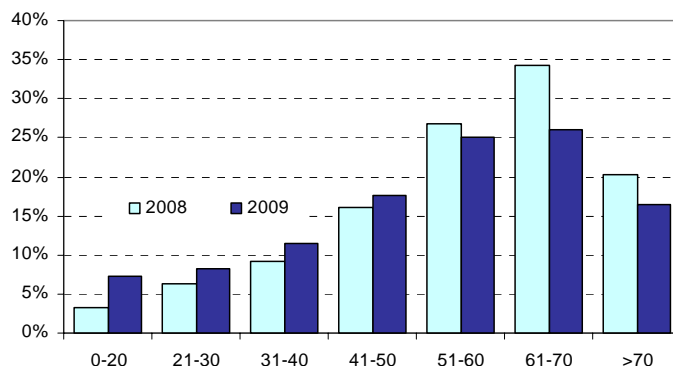
it should have? Qualitative evidence from our interviewees suggests that it has.⁵⁷ Limited quantitative evidence from Aon is suggestive although not definitive (figure 7). Aon's general experience was that the average level of take-up changed only slightly after ARRA, as discussed above. Take-up rates did change by age cohort, however.

Take-up grew among people age 50 and below, whose alternative might be buying an underwritten policy or none at all. This pattern is consistent with reduced adverse selection. Take-up surprisingly declined for those above age 50, people who might be thought likely to be in greater need of coverage. We have no information on whether worsening economic conditions may have led more to seek support under public programs.⁵⁸

Much more and more detailed information is needed to fully assess the impact of subsidy upon selection.

Figure 7. COBRA Take-Up Rates by Age before and after ARRA

(percentage enrolling by age cohort, 2008 and 2009)



Source: Aon. Note: populations presented include all COBRA eligibles.

Administrative issues: federal and private

Federal implementation

Administrative responsibilities for COBRA are spread across several agencies, which all acted promptly, as previously reported.⁵⁹ Administrative accomplishments included a new way to provide premium assistance for individuals at the health plan level without the need for

individual vouchers or tax credits and a new mode of rapid dispute resolution. In sharp contrast, normal public implementation and rule making is much slower. The original COBRA statute, for example, did not become effective until halfway through the year after enactment, and implementing regulations were extremely slow to

be promulgated.⁶⁰ Because ARRA provided no new administrative funding, existing departmental budgets and staffing had to be reprogrammed to create implementation teams. Information on the extent of this added effort is not readily available. Extra effort was also needed to implement the multiple, short extensions to ARRA, but revised model notices and other materials have been issued quite quickly.⁶¹

Private-sector implementation

Private implementation also involved intense but short-term effort, according to benefits managers and consultants interviewed. Many large firms told us that in the initial two months after enactment they held special weekly or other regular meetings devoted to implementation issues. Having to deal with outside vendors, which themselves sometime further subcontract for COBRA administration, complicated implementation.⁶² Various benefits-administration routines and data-processing and tracking systems had to be altered, and personnel retrained. Some interviewees complained that it was hard to decide quickly whether to reprogram automated processes to implement the short-term ARRA subsidy or instead simply to devise temporary add-ons or workarounds. All interviewees agreed that dealing retroactively with the earlier layoffs was more difficult than changing enrollment processes for newly eligible people. They also agreed that administration would have been simpler if ARRA had followed traditional COBRA categories rather than creating a new category of eligibles and new rules for termination.

Some large firms said that they had had to pay additional amounts to their outside administrator, but none thought the costs substantial. In contrast, the Ceridian report characterizes the ARRA shift as burdensome—but Ceridian and other benefits vendors routinely emphasize the complexities of regular COBRA as a reason for employers to hire outside help.⁶³ Objective data are lacking on before-and-after costs of COBRA administration. Firms appear not to routinely track such costs separately from general benefits administration; nor do they maintain much information about

COBRA enrollees or performance. As an experienced actuary noted of COBRA, “It is just so small in the context of the plans we deal with, and unmanageable, that we don’t give it much thought.”

Complaints almost all referred to eligibility and enrollment issues. Some objected to employers having to finance the “float” between enrollment and recoupment of the 65 percent federal share. But the process of offset against tax withholdings drew no complaints and was perceived to occur without problems.

We did not reinterview many informants during the several extensions and modifications to the initial legislation. Some complaints appeared in the press about the last minute and “piecemeal” nature of the extensions and additional complexities added there, again on a short-turnaround basis.⁶⁴

Communication with firms and eligible ex-employees

Federal communication with stakeholders appears to have been good. Beyond normal regulatory distribution channels, both the Department of Labor and the IRS have made heavy use of dedicated internet pages and encouraged stakeholders to subscribe to updates via e-mail.⁶⁵ In addition, during initial implementation they frequently conferred informally with stakeholders, including benefits consultants, employers, and others. Our private-sector interviewees appreciated the extent of effort from Treasury and Labor to facilitate private compliance—a “tremendous job,” said one. Beyond these federal efforts, a mini-industry of trade associations and other information intermediaries also spread the news. As one benefits manager told us, “Every lawyer and consultant in the world was holding seminars.”

Eligible people also seem to have been made aware of their rights. News articles began to appear explaining the ARRA subsidy even before the Act passed.⁶⁶ Consumer and union interviewees told us that the model notices had not been well written, but expressed little concern about under-notification.⁶⁷ Indeed, one union

interviewee said that their office was receiving calls about signing up well before notices were finalized.

An objective indicator of communication has been a high volume of consumer contacts with the Department of Labor—over 2.5 million visitors to its dedicated COBRA web site, plus some 190,000

Additional observations

Some large-firm interviewees reported that before ARRA they provided some amount of free or reduced cost COBRA coverage for laid-off workers, based upon the prior duration of employment. The longest subsidy period described was 72 weeks. Several of these companies reported that they reduced or dropped this prior benefit in reaction to ARRA. We also heard that some union contracts include free coverage for some months after a layoff or an “hours bank” that allows workers to continue full coverage despite reductions in hours or layoffs. It is not reliably known what share of firms provided such subsidies before ARRA.⁶⁹

How should the impact of ARRA be judged? Achieving up to a doubling in take-up seems substantial to us, especially coming immediately after a new intervention; programs often need lead time to achieve impacts. Moreover, one should not expect to approach 100 percent take up when less than 100 percent are eligible because of access to public or spousal coverage. Still, even the upper tier of 40 percent take-up for subsidized ARRA remains far short of the 81 percent average take-up among active workers⁷⁰ or very high enrollment in Medicare or children’s coverage through Medicaid and the Children’s Health Insurance Program—all of whom receive higher subsidies. Perhaps more troubling is that the overall size of the population receiving subsidy (not addressed in our data) appears lower than initial expectations for the program. When ARRA was being considered, the Joint Committee on Taxation projected that the subsidy would help some 7 million workers and dependents at some point during the fiscal year ending September 30, 2009, at a federal cost of \$14.3 billion.⁷¹ What take-up

inquiries and complaints since ARRA, compared with about 59,000 contacts a year under traditional COBRA.⁶⁸ The agency’s new appeals mechanism for eligibility denials was also heavily used, with some 70,000 appeals through August 2009, according to interviewees.

rate was projected was not disclosed, so direct comparisons with data presented here are not possible. However, IRS subsidy requests received from employers are reportedly running substantially lower than the Joint Committee estimate.⁷² The IRS data may reflect some delayed claiming, but they deserve credibility as a direct measure of effects in the entire population.

To get full enrollment in COBRA among laid-off workers who have just lost their incomes would require very low-cost coverage and perhaps also streamlined enrollment mechanisms. One of the firms we interviewed made continued coverage free, automatically enrolled lob losers, and thereby got complete participation. By design, COBRA even with subsidy reaches only one increment of the uninsured. Like the employer-based system on which it builds, COBRA coverage is not comprehensive. It disproportionately excludes lower-income workers, primarily because employer coverage disproportionately omits them as well.⁷³ In practice, continuation coverage is not an end in itself but rather serves mainly as a temporary bridge to new coverage at a new job or to retirement.

A 65 percent subsidy may seem too expensive to some observers, but it implies a doubling of individual enrollees’ premium share after job loss, and a higher level of subsidy is probably needed to make coverage affordable to most laid-off workers. The appropriate level of subsidy in this program is a judgment call, but the decision should be put into comparative context. For active workers, federal exclusion of benefits from taxation effectively confers an average subsidy of over 30 percent, higher for earners in the highest income tax brackets, lower for low-income people. COBRA

enrollment also helps support medical providers, reduces the extent of uncompensated care, which is heavily subsidized by all levels of government, and may somewhat reduce Medicaid enrollment. So the new 65 percent subsidy is not so much more than preexisting subsidies.

Our key informants mainly supported COBRA, the ARRA subsidy, and even an extension of ARRA as very helpful for a very needy group of people. This support was not uniform across all interviewees, but for us it was

Implications for policy

Extensions of ARRA

Congress has already extended and broadened the ARRA subsidy.⁷⁵ It is now considering what role COBRA should play before and after implementation of the more comprehensive health insurance reforms of the Affordable Care Act (PPACA). The following comments and suggestions grow out of our investigations:

- ARRA changes to date have been reasonable. Extending eligibility for subsidy to cover layoffs during 2010 has been consistent with the original enactment, as unemployment remains high despite renewed growth in economic production and decline in mass layoffs.⁷⁶ Extending the length of subsidy to 15 months aligned it more closely with regular COBRA's duration of 18 months, and it now exceeds the 10 or 11 months average for traditional enrollees.⁷⁷ Finally, like extensions for unemployment insurance, COBRA changes have not only been helpful to beneficiaries but also stimulative for the economy in a time of historically long spells of unemployment⁷⁸ and high continuing unemployment rates.
- It was also sensible not to enact an additional, longer second-chance or "look back" opportunity for previously laid-off workers to enroll in COBRA.⁷⁹ The retroactivity of ARRA was the most difficult feature to implement. Limited evidence suggests that it may have reached a much lower percentage of job losers than the normal, prospective application of the ARRA subsidy.
- Whether to continue the ARRA subsidy going forward is the largest COBRA policy issue. A good argument can be made for doing so, until implementation of PPACA coverage alternatives, or until the job market substantially improves. COBRA is quite important for many enrollees, our interviewees and news accounts have agreed, as many job losers have great difficulty obtaining affordable coverage in the nongroup market. ARRA has had some success in increasing coverage. In the longer run, PPACA's insurance exchanges will become operational and make ARRA subsidies largely superfluous by offering comprehensive coverage to job leavers and others as well as job losers, also without medical underwriting and with income-based subsidies to help pay premiums and cost sharing obligations. For low-income workers, PPACA's subsidies will be considerably more generous than those provided by ARRA.⁸⁰
- Assuming that COBRA subsidies continue in the near term, policymakers could encourage employers to include premium payments in severance packages by giving firms a tax credit covering perhaps 50 percent of payments for ARRA-eligible workers. Such a credit to encourage private maintenance of effort was a feature of the Medicare Modernization Act's addition of Part D Medicare drug coverage. If such a credit encouraged more firms to make coverage-continuation payments, the costs per new enrollee would fall both for government

still surprising, given all the years of negative comments about COBRA in the insurance and benefits trade press. COBRA has seemingly become an accepted part of the benefits landscape, a program that helps millions of people each year.⁷⁴ One articulate opponent of continuing ARRA as designed argued for some kind of an insurance pool instead, with more affordable benefits than comprehensive employer coverage.

and for each worker. Policymakers could also consider supplementing the ARRA subsidy for laid-off workers with low incomes, thus making coverage more affordable and take-up higher.⁸¹

- In focusing on involuntary layoffs, ARRA omitted a category of traditional COBRA eligibles—those who lose workplace coverage because of a reduction in hours. Adding subsidies for these people now would be administratively simple, as they are already a COBRA category. Moreover, forced reductions in hours seem just as much a response to severe economic conditions as layoffs. If the subsidy is to be continued further, it would be logical to reconsider this category.⁸²

Broader health reform

ARRA experience suggests some lessons for comprehensive reform as well.

- Timely and stakeholder-sensitive implementation can create some good will for a new policy even where it is somewhat adverse to stakeholder economic interests.⁸³ Working with stakeholder groups as health reform implementation proceeds seems desirable. The retroactive elements of COBRA implementation are not present in PPACA, whose implementation proceeds prospectively and typically with substantial lead times. That time can be put to good use improving communication and reducing anticipated transaction costs in the shift to new insurance rules and processes.
- Enrollment via COBRA and funding via an employer tax offset were much less cumbersome to implement than were the individual tax credits of the HCTC, an earlier 2000s program targeting a different category of the newly unemployed.⁸⁴ Opportunities exist for similarly efficient payments to health plans under health reform, as the recently enacted legislation provides for direct payment of tax credits and other subsidies from the IRS to health plans.⁸⁵
- COBRA enrollment patterns offer a useful reminder that adverse selection is ever present where insurance enrollees enjoy individual choice. Selection pressures will be worse in insurance exchanges than under COBRA, and good risk adjustment across carriers will be an important feature of PPACA implementation to monitor going forward. Risk selection less injurious in the COBRA context for several reasons: First, potential buyers come from a pool of people healthy enough to work, although their dependents may not be. Second, the duration of COBRA enrollment is limited; most enrollees are actively seeking other work and ESI from another employer. Third, COBRA premiums are not rated based on the spending of COBRA enrollees alone, but are pooled with active workers' coverage. Accordingly, no death spiral can occur, in which successively higher rates drive more and more healthy people out of a policy.
- The difficulties in obtaining information on patterns of COBRA enrollment and characteristics of enrollees suggest that it may be more difficult than anticipated for the Secretary of DHHS to obtain large amounts of new insurance information from employers and health benefits administrators under PPACA to the extent that such data are not routinely generated for private business purposes. Careful attention to the costs and benefits of new data requests or requirements should be paid in implementation, as it would be easy to create considerable political "push back" for data elements that are not vital to effective early oversight of health plans.
- Very high subsidies and very easy enrollment are needed to enroll all or nearly all newly unemployed people with presumptively low incomes. Interviewees from all perspectives agreed that even subsidized COBRA premiums are too high to help a great many potential enrollees. That a subsidy of 65 percent of premium evidently attracts 40 percent or less of the targeted population raises concern about the likely success of federal subsidies envisioned under PPACA. It is important that subsidies attract high voluntary participation,

as relying on the individual mandate to promote near-universal take-up may create

great pressure on that mechanism's relatively weak enforcement tools.

Conclusion

In sum, the experience of ARRA subsidies for COBRA continuation coverage shows that premium assistance indeed raises program participation, even among people whose income has fallen after involuntary termination of employment. Reported take-up rates among eligibles increased substantially after ARRA. The two largest data sets reviewed here showed average rises of 43 percent and 100 percent, although rates varied widely across employers and tax-subsidy claims to the IRS are thus far running much lower than expected. Getting higher enrollment would require higher subsidy and possibly also a mandate to obtain coverage, both features observed to affect a Massachusetts program for recipients of unemployment insurance. In practice, a mandate needs exceptions for low income people or sliding scale subsidies to make coverage affordable. Other programs with higher take up also have higher subsidies. Auto-enrollment mechanisms of various kinds can also boost enrollment.⁸⁶

Another lesson is that both public and private administrators are capable of very rapid implementation of a challenging new set of rights and responsibilities, with innovative dispute resolution and fund transfers. The experience also suggests that prospective, rather than

retrospective, implementation of new duties is desirable; that reformers need to anticipate adverse selection when offering open enrollment into coverage; and that implementation can go more smoothly with close involvement and communication with stakeholders even for controversial legislation..

Congress now faces the question of whether to continue ARRA's subsidies. The need for support, both for laid off workers and for the struggling economy as a whole, remains compelling. Subsidy costs to date have been well below budgeted levels, which suggests that continuing the subsidies longer would cost the federal treasury less than once envisioned. To further increase the effect of ARRA subsidies on uninsured, laid-off workers, Congress could consider a targeted supplemental credit for workers known to have low household incomes. And to increase the leverage obtained by federal payments, Congress could add incentives for employers to supplement ARRA subsidies in helping laid-off workers purchase health coverage. Finally, Congress could define the end of ARRA subsidies based, not on a specific calendar date, but on benchmark levels of unemployment that reflect significant improvement in the labor market, on which most Americans rely for their health coverage.

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Acknowledgments

The California HealthCare Foundation and The Commonwealth Fund provided the financial support that made this research possible, which is gratefully acknowledged. The authors thank Aon Corporation and Deseret Mutual for providing data for this project, along with the numerous interviewees who contributed their time and insights.

Notes

- ¹ DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau, Current Population Reports, P60-236, Income, Poverty, and Health Insurance Coverage in the United States: 2008, U.S. Government Printing Office, Washington, DC, September 2009 (sources of coverage; typically workers obtain coverage via their own employer or union plan, but not uncommonly from a spouse's plan).
- ² Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272, Title X on continuation coverage, codified at 29 U.S.C. sect.1161 ff. COBRA applies to private-sector employers offering group health plans and to state and local governments. Similar provisions under other statutes apply to the federal government and to plans offered by churches and certain church-related organizations. This brief calls all of these "COBRA."
- ³ Paul Fronstin, *Health Insurance Portability: COBRA Expansions and Job Mobility*, EBRI Issue Brief no. 194, February 1998, http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=105; Michelle M. Doty, Sheila D. Rustgi, Cathy Schoen, and Sara R. Collins, "Maintaining Health Insurance During a Recession: Likely COBRA Eligibility, An Updated Analysis Using the Commonwealth Fund 2007 Biennial Health Insurance Survey," New York: Commonwealth Fund, Issue Brief, pub. 1225, Jan. 2009, <http://www.commonwealthfund.org>.
- ⁴ ARRA, Public Law 111-5, Feb. 17, 2009, Title III, sect. 3001, Premium Assistance for COBRA Benefits; a copy of the relevant sections of statute is posted by US DOL at <http://www.dol.gov/ebsa/pdf/COBRAPremiumReductionProvision.pdf>.
- ⁵ According to UI tabulations using the 2006 MEPS household component (Medical Expenditure Panel Survey), some 6.8 million people had COBRA coverage for at least part of the year.
- ⁶ The federal expense was estimated at \$24.7 billion over several fiscal years. See Joint Committee on Taxation, "Estimated Budget Effects of the Revenue Provisions Contained in the Conference Agreement for H.R. 1, Fiscal Years 2009–2019, the "American Recovery and Reinvestment Tax Act of 2009," February 12, 2009, JCX-19-09, at note 15, <http://www.jct.gov/x-19-09.pdf>.
- ⁷ For 2006, 7.0 million people were unemployed, a 4.6 percent rate; the figures for 2009 were twice as high, 14.2 million and 9.3 percent. Bureau of Labor Statistics, "Employment status of the civilian non-institutional population 16 years and over, 1970 to date" <http://www.bls.gov/web/empsit/cpseea1.pdf>.
- ⁸ This brief updates and expands an earlier report, Randall R. Bovbjerg, Stan Dorn, Juliana Macri and Jack A. Meyer. "COBRA Subsidies for Laid-Off Workers: An Initial Report Card," The Commonwealth Fund, December 2009, <http://www.commonwealthfund.org/Content/Publications/Issue-Briefs/2009/Dec/The-New-COBRA-Subsidy-for-Laid-Off-Workers.aspx>. In all, we spoke with more than two dozen interviewees in firms' benefit departments, at insurers, within government, and elsewhere; almost all interviews occurred in 2009.
- ⁹ COBRA applies where a covered worker loses group coverage because of termination or reduction in the hours of employment (except for gross misconduct), or where a dependent is cut off by the employee's death or becoming entitled to Medicare, by divorce or legal separation, or by exceeding the age for dependent status. For good descriptions, see Janet Kinzer, Health Insurance Continuation Coverage Under COBRA, Congressional Research Service Report for Congress, no. R40142, March January 16, 2009 http://assets.opencrs.com/rpts/R40142_20090116.pdf; "Cobra Continuation of Coverage," chapt. 27, pp. 279–88, in EBRI, Fundamentals of Employee Benefit Programs (6th ed. 2009) http://www.ebri.org/pdf/publications/books/fundamentals/2009/18_PBGC_RETIREMENT_Funds_2009_EBRI.pdf.
- ¹⁰ Protection of workers at smaller firms was left to state law. State continuation statutes thus came to be known as "mini-COBRA" statutes, applicable in 40 states as of January 2010, according to "Expanded COBRA Continuation Coverage for Small Firm Employees, 2010" at <http://www.statehealthfacts.org>. State rules apply only to fully insured coverage, as federal ERISA law bars state regulation of self-insured employer plans. All or nearly all of small firms buy fully insured coverage.
- ¹¹ This description simplifies for clarity. Duration of coverage can be longer in special circumstances (e.g., dependents after death of worker), and disabled enrollees may be charged higher premiums.
- ¹² Urban Institute tabulations from the Current Population survey show that for 2007/2008, 122.5 million workers and dependents in firms with 25 or more employees had ESI; an additional 12.3 million had ESI in firms with 24 or fewer employees. The Department of Labor estimated that in 2000, the COBRA eligible population totaled 111 million people, split almost equally between employees and dependents (Employee Benefits Security Administration, "Health Care Continuation Coverage; Final Rule," 29 CFR Part 2590, promulgated in *Federal Register* 69(102):30084, at 30094, May 26, 2004).
- ¹³ Helen Lippman, "Antidotes for a COBRA Bite: Playing it safe can reduce costs and headaches," *Managed Healthcare Executive*, May 2, 2002,

[http://managedhealthcareexecutive.modernmedicine.com/mhe/Consolidated+Omnibus+Budget+Reconcil.+Act+\(COBRA\)/Antidotes-for-a-COBRA-bite/ArticleStandard/Article/detail/135283](http://managedhealthcareexecutive.modernmedicine.com/mhe/Consolidated+Omnibus+Budget+Reconcil.+Act+(COBRA)/Antidotes-for-a-COBRA-bite/ArticleStandard/Article/detail/135283).

- ¹⁴ Eve Tahmincioglu, “Navigating health plan options after a job loss: For many, individual insurance might be less costly choice than COBRA,” MSNBC, Aug 17, 2009, <http://today.msnbc.msn.com/id/32388729/ns/business-careers/>.
- ¹⁵ See EBRI, *Fundamentals* (sticker shock) and Kaiser Family Foundation and Health Research and Educational Trust, *Employer Health Benefits: 2009 Annual Survey*, at Exhibit 6.1, p. 68, Sept. 15, 2009, <http://ehbs.kff.org> (employee share of premiums).
- ¹⁶ Pre-ARRA take-up was tracked by the only regular reports on COBRA experience, from Spencer & Associates. Spencer has done 16 surveys, starting with COBRA’s first year, most recently on plan year 2008, <http://hr.cch.com/news/benefits/061009.asp>. See also sources cited in note 24 below.
- Spencer’s COBRA surveys have not been fully representative, but they have included a range of firm sizes and have been used by a variety of experts, including the Employee Benefit Research Institute and the Department of Labor. Fronstin (1998), above note 3; Department of Labor, Employee Benefits Security Administration, “Health Care Continuation Coverage; Final Rule,” 29 CFR Part 2590, promulgated in *Federal Register* 69(102):30084-30112, May 26, 2004, copy available at <http://www.dol.gov/ebsa/regs/fedreg/final/2004011796.pdf>.
- ¹⁷ This approximate ratio has been reported by Spencer over many years. Lippman (2002) has a chart of the Spencer findings from 1991–2000, above note 13.
- ¹⁸ ARRA, above note 4.
- ¹⁹ See Internal Revenue Service, “Instructions for Form 941,” rev. April 2010, <http://www.irs.gov/pub/irs-pdf/i941.pdf>.
- ²⁰ The provision said that both the qualifying layoff and the actual loss of workplace coverage had to occur in 2009, which effectively barred most layoffs in December from qualifying for subsidy, as group coverage is usually lost the first of the following month.
- ²¹ The Department of Defense Appropriations Act for Fiscal Year 2010 (DODAA), Public Law No. 111-118 (December 19, 2009) make three changes: It increased the maximum COBRA subsidy period to 15 months rather than the initial 9 months. It also extended the eligibility period thru the end of February, 2010, rather than the end of calendar 2009. Finally, it based the timing of eligibility upon the date of loss of employment rather than the date of COBRA qualifying event. The latter is normally the end of workplace coverage, that is, a month after termination of employment. The Temporary Extension Act of 2010, Public Law No. 111-144, March 2, 2010, extended the eligibility period by another month, through March 31st, and also qualified employees for subsidies if they lost coverage due to a reduction in hours prior to March 2d and are involuntarily terminated from employment after March 2d. The Continuing Extension Act of 2010, Public Law No. 111-157, March 4, 2010, temporarily extended eligibility through May 31, 2010.
- ²² On April 15, 2010, the President signed into law an extension of unemployment benefits and the COBRA premium assistance. This extension provides a COBRA premium subsidy for eligible individuals who are involuntarily terminated from employment through May 31, 2010. The new law also provides retroactive eligibility for individuals who lost their jobs after the prior COBRA subsidy expired on March 31, 2010.
- ²³ Hewitt Associates, “Hewitt Analysis Shows Average COBRA Enrollments Doubled Since Subsidy Became Available in February 2009: COBRA Enrollments Spiked in Most Industries Experiencing Mass Layoffs,” press release, August 18, 2009, <http://www.hewittassociates.com/Intl/NA/en-US/AboutHewitt/Newsroom/PressReleaseDetail.aspx?cid=7133>.
- ²⁴ Strictly speaking, Hewitt’s “pre”-ARRA year of March 2008–February 2009 included 6 months subject to ARRA—the “second chance” eligibility available to people laid off after August 2009. For 2008 and prior calendar years, the Spencer reports have varied from year to year in the take up rates reported—from a high of 28.5 percent in 1989 to a low of 9.7 percent in 2008; in about half of reports, the rate was 18–21 percent. See, for example, Stephen A. Huth, “COBRA survey results reflect cost increases, recession, and layoffs,” *Employee Benefit Plan Review*, October 2002. Occasional published tabulations have also varied. See Patrice Flynn, “COBRA Qualifying Events and Elections, 1987–1991,” *Inquiry* (Summer 1994): 215–20 (22 percent take up) and Mark C. Berger; Dan A. Black; Frank A. Scott; Amitabh Chandra, “Health Insurance Coverage of the Unemployed: COBRA and the Potential Effects of Kassebaum-Kennedy,” *Journal of Policy Analysis and Management* 18(3): 430–48 (1999) (24.6 percent, but includes early-retiree and severance coverage from former employer).
- ²⁵ The range of increase viewed in percentage terms is much wider than in percentage points, as some pre-ARRA rates were much lower than others. Thus, sector 3 in figure 1 saw an increase of well over 800 percent—from the low baseline of 7 to 67 percent (industrial manufacturing). The highest post-ARRA take-up rate was 75 percent (electronic), but because the baseline had been 55 percent, the rise was only 36 percent, well below average.
- ²⁶ Information from Aon.
- ²⁷ Ceridian Corporation, “Ceridian Analyzes COBRA Enrollments in Light of a Premium Subsidy in the American Recovery and Reinvestment Act of 2009 (ARRA): Complexity and Added Restrictions May Have Limited the Program’s Impact,” October 16, 2009, http://www.ceridian.com/www/content/9998/15514/15573/15853/15854/cobra_subsidy.pdf.

Ceridian describes itself as “the nation’s largest administrator of COBRA services,” representing all sizes of employers in much the same ratio as those offering health coverage.

²⁸ Information from Deseret.

²⁹ The study suggests that it undercounts take-up rates because it cannot properly adjust for ineligibility for subsidy, as by having spousal coverage. U.S. Treasury Department, Office of Economic Policy, *COBRA Insurance Coverage since the Recovery Act: Results from New Survey Data* (undated, pdf created May 2010), <http://www.ustreas.gov/offices/economic-policy/cobra%20final%20report.pdf>.

³⁰ Nationally, only about two thirds of all the unemployed were receiving UI as of the fourth quarter of 2009, but in New Jersey over 90 percent were getting UI (396.3 thousand people out of 433.3 thousand). U.S. Department of Labor, Unemployment Insurance Data Summary, 4th quarter 2009 http://workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum09/DataSum_2009_4.pdf.

³¹ According to key informants, involuntary terminations were tracked within benefits offices under ARRA because there was a business need to do so—complying with ARRA. Prior to ARRA, there was no such need. Another problem is that older records may be in storage and no longer readily accessible. We sought to recruit a firm that had closed plants completely before and after ARRA and maintained data, so as to observe clearly involuntary terminations of a similar nature, but were unsuccessful.

³² Historically, job leavers or “quits” substantially outnumbered job losers or “discharges and layoffs.” However from late 2008 through 2009, job losers were more numerous. Bureau of Labor Statistics, Job Openings and Labor Turnover Survey Highlights, February 2010, April 6, 2010 http://www.bls.gov/web/jolts/jlt_labstatgraphs.pdf.

Another source of underestimation of impacts is likely very modest—that upper income people do not qualify for ARRA subsidy and will at the end of the year have any subsidy recouped as they pay their taxes for the year.

³³ Deseret supplied complete information on 2009 terminations and on COBRA enrollments, but it had data on type of job loss for only one of its 22 employer clients. That one employer accounted for 24 percent of all 2009 terminations, and its terminations were all involuntary, as almost all operations at the firm ceased during the year (the health plan was continued). For the other 21 employers, COBRA notices were as usual done by each employer on a decentralized basis, and Deseret had information only on the resulting enrollments. Take-up rates were estimated based on the ratio of involuntary to voluntary terminations observed during September through December 2008, for which ARRA notices had to be retroactively provided on a centralized basis.

³⁴ This share of enrollees is known with precision.

³⁵ The large difference in the Deseret data between subsidized and unsubsidized take-up after ARRA may not be typical. For instance, for Aon the take-up rates after ARRA were similar for subsidized and unsubsidized COBRA.

³⁶ Limited information from MEPS 1996 suggests that job leavers’ take up is somewhat higher at a month after job loss than job losers, but the sample size was very small, and conditions may have changed over the ensuing decade. See Kanika Kapur and M. Susan Marquis, “Health Insurance for Workers Who Lose Jobs: Implications for Various Subsidy Schemes,” *Health Affairs*, May/June 2003 22(3): 203–13.

³⁷ The dissatisfaction was not severe, according to qualitative interviews with key informants in benefits offices, as reported in our 2009 issue brief, above note 8.

³⁸ The time period observed was September–December 2008. COBRA enrollments are posted to the month of the qualifying event, so that the data include enrollments whether they occurred during late 2008 on first-chance enrollment or after ARRA based on the second chance offer.

³⁹ For a general discussion, see William Poundstone, *Priceless: The Myth of Fair Value*, New York: Hill and Wang, 2010.

⁴⁰ A third possible factor might be that these agents were already self-selected as valuing or needing coverage more than the norm. Data were unavailable to test this possibility, but it was qualitatively reported to us that the agents’ insurance participation had been little different than for conventional workers.

⁴¹ For details beyond those sketched here, see <http://www.mass.gov>, at the “Help with Health Insurance” web page within the site of the Executive Office of Labor and Workforce Development, Unemployment Insurance.

⁴² Another benefit of ARRA was that it reduced the upfront cash requirement of COBRA enrollment from the full premium to only 35 percent of it; MSP then reimburses the enrollee for 80 percent of the 35 percent, leaving the net cost at 7 percent.

⁴³ The UI column does not perfectly capture changes in population eligible for MSP, so no participation rates are calculable. Many of those receiving UI are not MSP eligible because their incomes are too high or because they work in Massachusetts but live outside the state. There are no official records of the income levels of UI claimants, and in any event they change over time for MSP purposes, as eligibility is based on income six months prior to application and projected for six months into the future. It was not even possible to interview an MSP eligibility specialist, as all relevant staff perform many functions and no one person handles a large share of applications.

⁴⁴ Kay Lazar, “Jobless Turn to Health Lifeline: Thousands Flood State Program; Plan Helps with Insurance Costs,” *Boston Globe*, December 28, 2008,

http://www.boston.com/news/local/massachusetts/articles/2008/12/28/jobless_turn_to_health_lifeline/. Jobless rates are available from the Bureau of Labor Statistics at http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=latest_numbers&series_id=LASST25000003. A description of how federal extensions have affected UI in Massachusetts is available from the state Office of Labor and Workforce Development at <http://www.mass.gov/?pageID=elwdutilities&L=1&sid=Elwd&U=sitemap>.

⁴⁵ Tax penalties began for calendar 2008 and increased in 2009.

⁴⁶ An unknown here is to what extent there has been change in the share of the UI population eligible for MSP. It seems unlikely that there has been a large shift in the share of layoffs affecting Massachusetts residents as workers in the state who live out of state. However, the share of UI recipients with low incomes has likely changed, as longer spells of unemployment reduce incomes over time. Income for MSP eligibility is computed as that of the last six months plus an estimate of the next six months, so that after six months of UI, almost all UI recipients qualify for MSP. Such long spells of unemployment became much more common over the time frame of figure 3 and table 1. Nationally, 15 percent of the unemployed had been unemployed for 27 weeks or more as of January 2007; that figure rose to 40 percent for December 2009 and to 48 percent for April 2010. BLS data series “Of Total Unemployed, Percent Unemployed 27 Weeks & Over,” accessible from Data Retrieval: Labor Force Statistics (CPS) at <http://bls.gov/webapps/legacy/cpsatab12.htm>. However, new UI claimants began to decline in Massachusetts in 2009, and even a doubling of the share of long term UI recipients eligible for MSP would fall short of the rise seen in MSP. Finally, longer term UI claimants whose MSP income drops toward zero would qualify for Direct Coverage; the faster rise in 2009 occurred in MSP-COBRA.

⁴⁷ According to an interviewee at the US Department of Labor, administrative processes can affect the timing of UI enrollment from week to week. The exhibit uses quarterly data that report the average number of continuing claims in each week, which should reduce such effects.

⁴⁸ One governmental interviewee suggested that some of the observed effect comes from selection at the stage of job separation, not the point of COBRA election. Investigating this hypothesis was beyond the scope of this project.

⁴⁹ James Temple, “Quiet Menace: COBRA’s Popularity May Hike Rates,” *San Francisco Business Times*, 16(9): 22, Oct 05, 2001 (“exiting employees only tend buy it if they think they need it.”).

⁵⁰ COBRA eligibles have 60 days within which to enroll after receiving notice from the employer or plan administrator; that notice may be sent as late as 44 days after loss of employment. Even after enrollment, COBRA premiums are not due for 45 more days, so a decision to enroll need not be finalized until up to 149 days after job loss, depending upon the speed of notice. Employee Benefit Research Institute, “Time Line for Continuing Health Coverage Under COBRA,” EBRI Fact Sheet, FS-193, September 2005, <http://www.ebri.org/pdf/publications/facts/091605fact.pdf>.

⁵¹ These tabulations did not estimate separate spending during the period of COBRA enrollment from that that may have occurred under ESI, other coverage, or while uninsured during the same year. It also did not assess how different COBRA enrollees are from other job leavers in the same time period. In this section, “COBRA” status means that a person was on COBRA for some part of the year; the dates for spending cannot readily be matched with dates of enrollment.

⁵² A 50 percent increment is the typical difference reported in the various Spencer surveys, above note 16.

⁵³ These self reports are not objective, but the health status indicator has been found to be reasonably well associated with listed medical conditions and health care expenditures.

⁵⁴ Similarly, COBRA claims costs are sometimes zero for an employer’s COBRA enrollees in any given year, according to Spencer reports that break out spending by group. Stephen A. Huth, “One in Five Eligibles Chose COBRA: Survey,” *Employee Benefit Plan Review* Sep 1994; 49(3): 18–23.

⁵⁵ A recent story highlighted the value of COBRA for a 50-year-old diabetic woman, for example, Block (2010), above note 29.

⁵⁶ Electing COBRA rather than going uninsured also maintaining insurability going forward, as HIPAA’s guarantees of insurability require that gaps in coverage not exceed 63 days.

⁵⁷ See our 2009 issue brief, above note 8.

⁵⁸ Among Desert COBRA enrollees, average age rose from 2007 to 2008, then declined in 2009. The company could supply no information on the age profile of job separations, however, making the average ages hard to interpret.

⁵⁹ See our 2009 issue brief, above note 8. GAO subsequently also noted remarkable, though imperfect implementation of ARRA more broadly,

⁶⁰ The Internal Revenue Service proposed guidance for employers on COBRA in 1997, which were only finalized in 1999 and 2001. COBRA notification requirements were promulgated by the Department of Labor in 2004. See Kinzer, above note 9.

⁶¹ Department of Labor, COBRA Continuation Coverage Assistance Under ARRA, <http://www.dol.gov/ebsa/COBRA.html>; Internal Revenue service, COBRA Health Insurance Continuation Premium Subsidy, <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.

⁶² On contracting out, see Jim Trimble, “COBRA Compliance: How Employers Can Successfully Meet Today’s Complexities,” *Employee Benefits Journal* 28(1): 48–50 (2003).

- ⁶³ Karli Dunkelberger, "Avoiding COBRA's Bite: Three Keys to Compliance," *Compensation and Benefits Review* 37(2): 44-49 (2005).
- ⁶⁴ Andy Miller, "Frustrated Workers and Employers Anxious for COBRA Extension," Kaiser Health News, December 11, 2009, <http://www.kaiserhealthnews.org/Stories/2009/December/11/COBRA.aspx>; M.P. McQueen, "Cobra Subsidy Goes On," *Wall St. Journal*, April 18, 2010, <http://online.wsj.com/article/SB10001424052748704246804575190382375195338.html>.
- ⁶⁵ Internal Revenue Service, "COBRA Health Insurance Continuation Premium Subsidy," <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>; Department of Labor, Employee Benefits Security Administration, "COBRA Continuation Coverage Assistance Under ARRA," <http://www.dol.gov/ebsa/cobra.html>.
- ⁶⁶ Melissa Healy, "Job Loss: Stimulus Package Includes Health Insurance Subsidy," *Los Angeles Times*, February 10, 2009, http://latimesblogs.latimes.com/booster_shots/2009/02/job-loss-stimul.html.
- ⁶⁷ On the Flesch tests built into Microsoft Word, the general notice scores as no more readable than this issue brief—suitable for college students.
- ⁶⁸ Testimony of Secretary of Labor Hilda L. Solis [on FFY 2011 budget request] before the Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, U.S. House of Representatives, March 10, 2010 (150,000) http://www.dol.gov/_sec/media/congress/20100310_appropriations.htm; Department of Labor, "Health Care Continuation Coverage; Final Rule," May 26, 2004 (59,000) <http://www.dol.gov/ebsa/regs/fedreg/final/2004011796.pdf>.
- ⁶⁹ Based upon 1996 MEPS data, it was estimated that 20 percent of COBRA-eligible job losers were continuing to receive coverage from their prior employers as of 30 days after job loss; the figure declined to 6 percent at 6 months after job loss (Kapur and Marquis (2003), exhibit 3, above note 36). The practice is common enough to be part of Ceridian's demonstrations of its benefits-management experience; see "Downsizing Dilemma," Ceridian Connection, December 2008, http://www.ceridian.com/human_resources_article/1,6266,15760-70167,00.html, "Payroll and Benefits Professionals Step Up as Employers Cut Back," Ceridian Connection, April 2009, http://www.ceridian.com/human_resources_article/1,6266,15760-70874,00.html.
- ⁷⁰ See exhibit 6, p. 52, *Employer Health Benefits* (2009), above note 15.
- ⁷¹ Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the Conference Agreement for H.R. 1, the "American Recovery and Reinvestment Tax Act of 2009,"* JCX-19-09, February 12, 2009, <http://www.jct.gov/x-19-09.pdf>.
- ⁷² As of March 20, 2010, employers had filed tax returns claiming approximately \$2.2 billion in ARRA credits for COBRA coverage, only about 1/7 the amount expected through the prior September. Government Accountability Office, *GAO Proactive Testing of ARRA Tax Credits for COBRA Premium Payments*, GAO-10-804R, June 14, 2010 <http://www.gao.gov/new.items/d10804r.pdf>. The Congressional Budget Office used the Joint Committee's much higher estimate in "scoring" the fiscal impact of ARRA, Congressional Budget Office, "Conference Agreement for H.R. 1, the American Recovery and Reinvestment Act of 2009," (table entry "Title III - Health Insurance Assistance"), February 13, 2009, <http://www.cbo.gov/ftpdocs/99xx/doc9989/hr1conference.pdf>.
- ⁷³ The most complete picture comes from older data (1996): Among job losers estimated to be COBRA eligible, the same 18-percent share take up COBRA among low-income workers and among higher-income workers. A much higher percentage of lower-income job-losers were uninsured, however, but only because over half had been uninsured before job loss (Kapur and Marquis (2003), exhibit 4, above note 38).
- ⁷⁴ "Spencer's Benefits Reports COBRA Survey Finds Recession Takes Hold: More Were Eligible, Fewer Signed Up, Costs Stay High," press release, June 10, 2009, <http://www.cch.com/press/news/2009/20090610h.asp>.
- ⁷⁵ S. 2730 Sen Brown, Sherrod [OH] with five cosponsors; H.R.3930 Rep Sestak, Joe [PA-7] (introduced 10/26/2009)
- ⁷⁶ The unemployment rate of April 2010 rose slightly over the first quarter, to 9.9 percent, U.S. Bureau of Labor Statistics, "The Employment Situation—April 2010," April 30, 2010, <http://www.bls.gov/news.release/empsit.nr0.htm>. Real gross domestic product grew at an annual rate of 3.2 percent in the first quarter, according to the U.S. Bureau of Economic Analysis, "Gross Domestic Product: First Quarter 2010 (Advance Estimate)," April 30, 2010 <http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>, which was the third consecutive quarter of growth, BEA "Gross Domestic Product: Percent change from preceding period," April 30, 2010, <http://www.bea.gov/national/xls/gdpchg.xls>. Mass layoffs declined in the first quarter of 2010 to nearly pre-recession levels, BLS, "The Editor's Desk: Record decreases in extended mass layoffs," May 14, 2010 http://www.bls.gov/opub/ted/2010/ted_20100514.htm
- ⁷⁷ Fronstin (1998), above note 3.
- ⁷⁸ See BLS (2010), above note 46.
- ⁷⁹ Proposed but unenacted H. R. 3930 would have added an additional 5 months of retroactivity, extending eligibility back to layoffs from April 1 to August 30, 2008. Over a year and a half of COBRA retroactivity would have been substantially harder for employers and administrators to implement than was the five month look-back of ARRA.

- ⁸⁰ Under PPACA, Medicaid coverage will be free for people with incomes up to 133 percent of the federal poverty level, and premium subsidies will limit the cost of coverage to those up to 400 percent of FPL.
- ⁸¹ Low income could be demonstrated through (a) prior-year tax returns, since low pre-layoff income is likely to be associated with little current capacity to pay premiums; (b) receipt of other means-tested benefits; or (c) documentation of current low levels of income. The Massachusetts MSP program, above, blends documented past income with expected future income, which is zero for most recipients of UI payments.
- ⁸² The Temporary Extension Act of 2010, Pub. Law 111-144, March 2, 2010, helps some people who first became eligible for COBRA by having a reduction in hours after September 1, 2008. Under traditional COBRA, if they did not elect COBRA then or if they elected it and later dropped it, they would lose any ability later to sign up. The Act allows them to get ARRA subsidy now if they were involuntarily laid off after the effective date of the Act.
- ⁸³ In contrast, delay and incompleteness foster complaints. Spencer's report on plan year 2003 notes that relative to prior years, "there were many fewer complaints about COBRA regulations, probably because the rules were finalized in 2001." Spencer Benefits Reports (2004), above.
- ⁸⁴ Stan Dorn, *Health Coverage Tax Credits: A Small Program Offering Large Policy Lessons*, Washington, DC: The Urban Institute, February 2008, <http://www.urban.org/url.cfm?ID=411608>.
- ⁸⁵ PPACA, sec. 1412.
- ⁸⁶ Stan Dorn, *Applying 21st-Century Eligibility and Enrollment Methods to National Health Care Reform*, Washington, DC: The Urban Institute, December 2009, <http://www.urban.org/url.cfm?ID=411985>.